

## **ATTACHMENT K**

### **Prevailing Wage Compliance Questions and Answers**

#### **Is Payment of Prevailing Wage Required?**

Yes. Any Recipient whose project involves “public works” as the term is defined in defined in Chapter 1 of Part 7 of Division 2 of the Labor Code, commencing with Section 1720, must pay prevailing wages in accordance with the law.

#### **Does prevailing wage apply to private entities?**

Yes. A private entity must pay prevailing wage under California law if the project involves public works.

#### **How do I know if my project involves public works?**

The California Labor Code beginning at section 1720 deals with this issue. Labor Code sections 1720 and 1771 define public works as:

Construction (includes work performed during the design and preconstruction phases of construction including but not limited to, inspection and land surveying work).

Alteration

Demolition.

Installation.

Repair work.

Maintenance work.

These Labor Code sections can be found online at <http://www.leginfo.ca.gov/calaw.html>.

Below are some examples (this list is not exhaustive) of the types of activities that typically lead to finding that a project is a public work:

Cement work such as pouring a cement pad.

Site preparation such as grading.

Surveying.

Electrical work such as wiring.

Carpentry work.

Limited inspection activities.

#### **What kind of trades or workers must be paid prevailing wage?**

The California Department of Industrial Relations (DIR) Division of Labor Statistics and Research (DLSR) makes the final determination on which trades and/or workers are covered by prevailing wage laws. DLSR maintains a list of the covered trades/workers that are entitled to prevailing wage for public works commercial construction projects. See [www.dir.ca.gov/dlsr/statistics\\_research.html](http://www.dir.ca.gov/dlsr/statistics_research.html) or call the DLSR Prevailing Wage Hotline (415) 703-4774 for more information about these trades.

Generally, workers such as the following would be covered trades:

Operating engineer (heavy equipment operator), Surveyor, Carpenter, Cement Mason, Electrician

The following types of workers usually would NOT be covered trades entitled to prevailing wage: Engineer, Project superintendent / construction manager / project manager, Architect, Planner

The examples are for general information only. If you have questions about whether a worker is in a covered trade requiring payment of prevailing wages, you should check directly with DIR.

**What if I am unsure whether my project involves public works and prevailing wage must be paid? How Should I Budget if I am Unsure About Prevailing Wage?**

You are encouraged to determine if your project involves public works as soon as possible. In order to determine if your project is a public work, you will need to contact the California Department of Industrial Relations (DIR). They can be reached at (415) 703-4774. If you do not know whether your project is a public work and you have not obtained a determination from DIR that the project is not a public work, you must budget with the assumption that the project is a public work and comply with the prevailing wage laws, including but not limited to the payment of prevailing wages.

On the budget, please indicate whether your budget includes amounts for the payment of prevailing wage. You must indicate “yes” unless you have received a determination from DIR that the project is not a public work.

If you do not budget for prevailing wage, and it is later determined that the project involves public works and prevailing wage must be paid, you may be liable for damages and penalties. You also cannot later increase your Grant award if it is determined that prevailing wages apply and increase project costs higher than budgeted. The amount requested in your proposal is the maximum that will be paid. Any increased costs for payment of prevailing wage must be paid with match funds. The Energy Commission’s Grant award amount does not change or increase if the applicant’s costs increase for any reason.

**How do I get assistance in determining whether the project involves public works?**

First, call the DLSR Prevailing Wage Hotline, (415) 703-4774. The Prevailing Wage Hotline can frequently give advice quickly on routine questions. If the Prevailing Wage Hotline is unable to answer your question, you will need to write to the Director of DIR for a coverage determination on whether your project involves public works. You would include all the relevant facts and documents related to the project. DIR regulations, Title 8 California Code of Regulations, section 16001(a)(1), provides that any interested party may file a request with the Director of DIR to determine coverage under the prevailing wage laws. The request can be either for a specific project or type of work to be performed that the interested party believes may be subject to or excluded from coverage as public works under the Labor Code. The full text of DIR’s regulations can be found at: <http://ccr.oal.ca.gov>, (Title 8, Division 1, Chapter 8, Subchapter 3, Article 2). Send requests for a coverage determination to:

Department of Industrial Relations  
Office of the Director  
455 Golden Gate Avenue  
San Francisco CA 94102

**How long will it take to get an answer?**

We do not know, but hope that the question can be asked and answered informally and quickly through the Prevailing Wage Hotline. If you need to submit a request to the Director of DIR, it will take longer to get a coverage determination.

**What happens if I make a request to DIR but do not have a decision, or am still unsure whether prevailing wage must be paid, by the time the Energy Commission makes an award at a business meeting, or by the time I execute the Grant Agreement?**

In this case, the Energy Commission would execute a Grant Agreement with a budget that assumes prevailing wage is required. If the Recipient, prior to performing the activities in question, then receives a determination from DIR that the project is not a public work, then the Energy Commission can execute an amendment with the Recipient to decrease the budget accordingly. The prevailing wage Terms and Conditions can also be removed.

**What if I submit a proposal to the Energy Commission with a project that I say is not a public work, and the Energy Commission believes that it might be a public work? How would we resolve our differences?**

We would request that you first call the Prevailing Wage Hotline. If you do not receive an answer, we would request that you write a letter to DIR and ask DIR to make the decision. If DIR says the project is a public work, then you will need to pay prevailing wages. If you do not obtain a DIR determination that the project is not a public work requiring the payment of prevailing wage, then you must assume that the project is a public work and comply with the prevailing wage laws, including paying prevailing wages.

**If my project is a public work, how do I know what prevailing wages are required in order to prepare a budget?**

If your project is a public work, please submit your budget with the applicable prevailing wage for each trade entitled to prevailing wage as determined by DLSR. For prevailing wage rate information for commercial projects, see [www.dir.ca.gov/dlsr/statistics\\_research.html](http://www.dir.ca.gov/dlsr/statistics_research.html) or call the Prevailing Wage Hotline (415) 703-4774. If your project involves residential construction, the rates are not listed on DIR's website, and you must call the DLSR Prevailing Wage Hotline.

**What do I do if workers will be used who do not fit neatly into one of the categories on the DIR website?**

Contact DLSR and describe the type of trade you anticipate will be required in your project and ask whether there is an existing prevailing wage already set by DLSR.

**Does prevailing wage apply to a public entity that performs project work with its own employees?**

No.

**If my project is considered a public work, then are there any special requirements?**

Yes. For example, the Grantee must make sure that covered workers are paid prevailing wage. There are other requirements, such as keeping payroll records, complying with working hour requirements, and apprenticeship obligations. See the Labor Code and the sample Terms and conditions, Special Condition regarding Prevailing Wage.